

WYTH0106-100 (AM100058)
Serial No. 09/872,250

February 9, 2006 Appeal Brief

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Gary S. Grubb	Art Unit:	1617
		Examiner:	San Ming R Hui
Serial No.:	09/872,250	Confirmation No.:	4735
Filed:	June 1, 2001	Docket No.:	WYTH0106-100 (AM100058)
For:	STARTER KIT FOR LOW DOSE ORAL CONTRACEPTIVES		

MAIL STOP APPEAL BRIEF-PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

VIA EXPRESS MAIL LABEL NO: EV146 601 619US
DATE SENT: February 9, 2006

APPELLANT'S BRIEF PURSUANT TO 37 C.F.R. § 41.31

Appellants appeal the Final Rejection dated September 14, 2005 in connection with the above-identified application. No Advisory Action has been received. A Notice of Appeal with appropriate fees was filed on November 9, 2005. This brief contains the items required by 37 C.F.R. § 41.37, under appropriate headings, and an authorization to charge the fee set forth in 37 C.F.R. § 41.20(b)(2).

(i) Real Party in Interest

The real party in interest is Wyeth, the sole Assignee of all right, title and interest in the above-referenced application, as evidenced by the Change of Name documents recorded August 3, 2005 at reel 016608 and frame 0507 indicating a change of name from AMERICAN HOME PRODUCTS CORPORATION to WYETH and the Assignment to AMERICAN HOME PRODUCTS CORPORATION executed by all inventors and recorded on June 6, 2001 at reel 011888 and frame 0500 of the USPTO records.

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(ii) Related Appeals and Interferences

No other appeals or interferences are known to appellant, appellant's legal representative, or assignee which would directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(iii) Status of Claims

Claims 1-11 are pending in the application; each has been rejected under 35 U.S.C. § 103 over a combination of J. Endikrat *et al.*, *A Twelve-Month Comparative Clinical Investigation of Two Low-Dose Oral Contraceptives Containing 20 µg Ethinylestradiol/75µg Gestodene and 30µg Ethinylestradiol/75µg Gestodene with Respect to Efficacy, Cycle Control, and Tolerance*, Contraception, 1997, 55:131-137 (Endikrat *et al.*); U.S. Patent No. 5,552,394 (Hodgen '394), and Basic & Clinical Pharmacology, Ed. B.G. Katzung, 6th Ed., p. 620 (Katzung).

(iv) Status of Amendments

No amendment to the claims has been made at any time during the prosecution of this application. All claims are original.

(v) Summary of the Invention

The claimed invention relates to a multi-cycle starter kit for oral contraceptives. The kit contains an oral contraceptive pack for each of at least two separate menstrual cycles. Each oral contraceptive pack contains individual doses of oral contraceptive or a placebo/non-estrogenic agent, as is common in the art, for each day of the menstrual cycle. Each contraceptive dose contains both an estrogen and a progestin. In order to reduce undesirable spotting and breakthrough bleeding, which is more common in the initial cycle or cycles, the starter kit includes at least one initial cycle pack which includes daily doses containing a greater amount of steroid (estrogen) than found in the last pack. The last pack contains individual daily doses not exceeding 20 µg estrogen. The low dose in the last cycle pack is sufficient to produce the desired contraceptive effect without the potential risks that might be associated with higher doses of estrogen. This low dose is continued after the starter kit has been used completely. Thus, Appellants' claimed kit provides higher doses of steroid in the initial cycle(s), where increased incidence of spotting and bleed through is expected, followed by reduced

steroid levels in subsequent cycles, where lower incidence of spotting and breakthrough bleeding is expected.

(vi) Grounds Of Rejection To Be Reviewed On Appeal

The sole issue before the Board is whether claims 1-11 are unpatentable under 35 U.S.C. § 103 over the combination of Endikrat *et al.*, Hodgen '394, and Katzung.

(vii) Argument

Claims 1-11 stand rejected for alleged obviousness under 35 U.S.C. § 103 (a) over Endikrat *et al.*, Hodgen '394, and Katzung.

A. The Claimed Invention

Independent claim 1 is reproduced here as representative of the invention:

1. An oral contraceptive starter kit comprising at least two cycle packs of oral contraceptives containing an estrogen and a progestin, and having a penultimate and a last cycle pack, the effective dosage of steroid in the penultimate cycle pack being greater than the effective dosage of steroid in the last cycle pack, the last cycle pack providing no more than about 20 μ g estrogen per dosage unit.

A complete listing of the claims is attached as the Claims Appendix.

B. The Rejection

The Action states it "would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the oral contraceptives packs of 30 mcg and 20mcg of Ethinylestradiol together in a kit." (see Office Action, p. 3.) Appellants note the Action's clear admission that the "primary references do not expressly teach the combination of the oral contraceptives packs together as a kit" (see Office Action, p. 3). The Action also notes that Hodgen '394 teaches "a method of reducing breakthrough bleeding in the menstrual cycles except for the first cycle employing ultra-low dose of Ethinylestradiol" (see Office Action, p. 2, emphasis added). The Action also indicates that Katzung is relied upon merely because it provides a list of suitable progestins for use in contraceptives (see Office Action, p. 3). Thus, to reach Appellants' claimed invention of a starter kit comprising at least two cycle packs wherein the last cycle pack contains less steroid than earlier cycle packs and no more than about 20 μ g estrogen per dosage unit, the Office relies on Endikrat *et al.*

C. The Cited Art

Endikrat *et al.* shows two separately administered treatment regimes. Each involves a treatment regime which was tracked for twelve cycles. In the first regime, patients were administered a contraceptive containing 20 μ g ethinylestradiol (EE), through each of the twelve cycles. Under the second regime, patients were administered a contraceptive containing 30 μ g EE through each of the twelve cycles. The purpose of the study was to compare effectiveness, tolerability, and cycle control offered by the favored lower 20 μ g dose when compared to the 30 μ g dose. Effectiveness, tolerability, and cycle control were found to be sufficient with the 20 μ g regime. Endikrat *et al.* conclude "following the trend to further reduce hormone dose, the 20 μ g EE2 oral contraceptive could be administered in the first line." (p. 136.)

Hodgen '394 supports the use of ultra-low dose ethinylestradiol throughout the treatment regime, even in initial cycles, despite higher bleeding rates in initial cycles. The disclosure of Hodgen '394 compares the administration of **consistent** low doses of oral contraceptives over three consecutive 28 day cycles, where one test group is administered the oral contraceptive for 21 days of each 28 day cycle and a second test group is administered the oral contraceptive for 24 days of each 28 day cycle; on the remaining days a placebo was given. As with Endikrat *et al.*, the initial cycle revealed greater incidence of spotting and breakthrough bleeding in both groups. In subsequent cycles, where the oral contraceptive dose was consistent with the initial cycle, lower levels of breakthrough bleeding and spotting were seen in both groups compared to the initial cycle. Lower levels were seen in subsequent cycles of the 24 day treatment cycle when compared to the 21 day treatment cycle. Hodgen '394 teaches that the longer 24 day treatment regime results in lower breakthrough bleeding and spotting levels, **after** the initial cycle. (see Abstract, and col. 6, lines 35-40.) At no time were any test subjects from either group switched from a relatively high dose to a relatively low dose; the dose was consistent from cycle to cycle. Hodgen '394, like Endikrat *et al.*, notes the desire to reduce the overall hormonal intake indicating that even with the longer 24 day treatment cycle, the lower daily dose still provides a significant reduction in hormone intake over an annual treatment period. (Col. 5, lines 55-60) Hodgen '394 is silent with respect to altering the dose in any way from one cycle to the next. Indeed Hodgen '394 reports and apparently accepts the "reduced incidence of breakthrough bleeding **after** the first cycle." (see Hodgen '394 Abstract, emphasis added.)

Hodgen '394 and Endikrat *et al.* have several things in common. Most importantly is that in each case, in each study, each patient was administered an oral contraceptive from one cycle to the next having an identical content as the oral contraceptive administered in the first month

and every month thereafter during the treatment. Both recognize that with low dose treatment, the initial treatment cycles, and particularly the first cycle, suffer from relatively high incidence of spotting and breakthrough bleeding. Both also appear to agree that despite this problem, the benefits of the low dose treatment outweigh the problem, in light of the overall acceptable levels of spotting and breakthrough bleeding, tolerance, cycle control, and contraceptive efficacy.

- D. The obviousness rejection should be withdrawn because 1. there is no motivation to modify or combine the references, 2. Appellants' claimed invention departs from conventional wisdom, 3. the rejection relies on impermissible hindsight, and 4. secondary considerations support the finding of non-obviousness.**

Where a single prior art reference does not anticipate a claim under 35 U.S.C. § 102, it may be modified or combined with other prior art reference(s) to show obviousness under 35 U.S.C. § 103.

- 1. References may be modified or combined only where the art provides a suggestion or motivation to do so; such a suggestion or motivation is lacking in this case.**

Section 103 requires that the modification or combination be obvious to those skilled in the art at the time of invention. The courts have repeatedly acknowledged the difficulty of this task, but have insisted upon showing a particular finding of a teaching, suggestion, or motivation to make the modification or combination in the prior art. The CAFC reiterated its longstanding position in *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999), noting that:

Measuring a claimed invention against the standard established by section 103 requires the oft-difficult but critical step of casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field.

“Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination.” *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

a) Both Endikrat *et al.* and Hodgen '394 are silent with respect to altering estrogen dose from one cycle to the next, as claimed by Appellants.

Appellants claimed starter kit claims a penultimate cycle pack having a greater steroid content than a last pack where the estrogen dose is 20 μ g or less. Thus, Appellants claim a kit where estrogen doses are altered from one cycle to the next.

"When a rejection depends on a combination of prior art references, there must be some teaching, suggestion, or motivation to combine the references. *In re Rouffet*, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998) (*citing In re Geiger*, 815, F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987)).

Neither Endikrat *et al.* nor Hodgen '394 disclose such regimes. Endikrat *et al.* discloses two separate treatment regimes, each maintaining either 20 μ g or 30 μ g consistently throughout the 12 month treatment period. Hodgen '394 also discloses two treatment regimes. In Hodgen '394, each treatment contains an identical dose (between regimes and from cycle to cycle). The difference between regimes is that in one treatment, estrogen is administered for 24 days, while in the other estrogen is administered for only 21 days. Thus, both Endikrat *et al.* and Hodgen '394, through the four disclosed treatment regimes, teach only the consistent dosing from one cycle to the next, even when looking at initial cycles compared to subsequent cycles. There simply is no teaching or suggestion to alter the dose from one cycle to the next as taught by Appellants, and no suggestion that it would be desirable to do so (except for *increasing* the dose where the low dose is ineffective).

For this reason alone, the obviousness rejection should be withdrawn.

b) Endikrat *et al.* and Hodgen '394 are silent with regard to any benefit of an initially higher estrogen dose, as taught by Appellants.

It was well known in the art that initial cycles under contraceptive treatment met with greater incidence of spotting, breakthrough bleeding, and other issues than in later cycles as the body adjusted to the treatment. The cited references recognize this fact and appear to view it as unchangeable or, at least, acceptable in light of other benefits. Each of the references is utterly silent with respect to addressing the increased incidence of spotting and breakthrough bleeding in initial cycles.

Not only must the prior art contain a teaching, suggestion or motivation to make the modification or combination, but the CAFC demands that the teaching, suggestion, or motivation

be factually presented as evidence against the claimed invention. There must be evidence that "a skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed." *In re Rouffet*, 149 F.3d at 1357, 47 USPQ2d at 1456; see also *In re Werner Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("[A] rejection cannot be predicated on the mere identification . . . of individual components of claimed limitations. Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.")

Neither Endikrat *et al.* nor Hodgen '394 recognizes the benefit of or purpose in varying the dose, except, in sharp contrast to Appellants' teachings, to *increase* the dose in subsequent cycles when the low dose treatment is insufficient or unacceptable. In fact, both, although confronted with the problem of initial breakthrough bleeding and spotting rates, appear to be focused on obtaining the lowest estrogen dose possible, without losing efficacy or cycle control. Both appear to view the initial bleed through rates as acceptable in light of the benefits of reduced estrogen intake. Without recognizing any benefit or purpose for using an initially higher estrogen dose, the references, alone or in combination, simply do not provide those of skill in the art with any motivation or suggestion to do so. Accordingly, the obviousness rejection should be withdrawn.

- c) **Unlike Appellants, neither Endikrat *et al.* nor Hodgen '394 address the problem of initial breakthrough bleeding and spotting and, therefore, do not suggest the desirability of any change to do so.**

Despite higher incidence of spotting and breakthrough bleeding in initial cycles, Endikrat *et al.* and Hodgen '394 are each satisfied that their disclosed low dose regimes are acceptable and suitable for use as contraceptive treatments. Endikrat *et al.* is particularly relevant on this point, since it discloses both a relatively high dose treatment and a low dose treatment.

"When determining the patentability of a claimed invention which combines two known elements, 'the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination.' " *In re Beattie*, 974 F.2d 1309, 1311-12, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992) (*quoting Lindemann*, 730 F.2d at 1462, 221 USPQ at 488).

Endikrat *et al.* shows higher incidence of spotting and breakthrough bleeding in the initial cycles of both the 20 μ g EE and the 30 μ g EE treatment regimes when compared to subsequent cycles. The data presented in Endikrat *et al.* appear to show that the 20 μ g EE treatment regime has greater incidence of any breakthrough bleeding in the first three months than the similar treatment period of the 30 μ g EE treatment (see Fig. 1). Nevertheless, the reference does not indicate that this made the treatment unacceptable. Instead, it reports comparable drop-out rates in both the 20 μ g and the 30 μ g study as well as similarities with regard to compliance and other factors. These factors suggest that patients responded equally to either treatment regime and were not discouraged any more or less from continuing with either treatment when compared to the other. Thus, Endikrat *et al.* does not teach or suggest that the 20 μ g treatment was ineffective or undesirable. Endikrat *et al.* reports that the study indicates that the 20 μ g EE preparation is reliable and well-tolerated, showing only "slightly less favorable bleeding patterns". (p. 136, col. 1, third full paragraph.) The 20 μ g treatment "neither compromises contraceptive reliability nor leads to clinically unacceptable cycle control."

Endikrat *et al.* continues, stating the

potential advantage of the low hormone content might outweigh in part the less favorable bleeding pattern. Following the trend to further reduce the hormone dose, the 20 μ g EE2 oral contraceptives could be administered in the first line. For women having a history of cycle control problems or for women having experienced such problems under a 20 μ g EE2 preparation, preference should be given to the 30 μ g EE2 drug.

Endikrat *et al.* therefore does not suggest to one of skill in the art the need or desire to alter the 20 μ g treatment regime, except to switch to higher doses in later cycles when necessary.

2. Appellants claimed invention breaks from the conventional wisdom followed in the applied art.

As noted, Endikrat *et al.* sets forth and follows the conventional wisdom to administer as low a dose as possible, and therefore suggests *beginning* treatment with a low dose and *increasing* it *only* when *necessary*--that is if control or bleeding problems persist beyond the initial cycle(s) where it is expected. This conventional wisdom is the **exact opposite** of the treatment regime facilitated by Appellants' claimed contraceptive kit. Proceeding contrary to accepted wisdom in the art is evidence of nonobviousness. See MPEP § 2145 X.D.3 citing *In re Hedges*, 783 F.2d 1038, 228 USPQ 685 (Fed. Cir. 1986).

Endikrat *et al.* follows the conventional wisdom, teaching away from treatment regimes and kits that facilitate administration of relatively high doses of steroid in initial cycles followed in subsequent cycles by relatively low dose administration, such as those in the claimed starter kit. In fact, Endikrat *et al.* ultimately concludes, despite the higher incidence of initial breakthrough bleeding, that prescription of the 20 μ g treatment should be the **first line** therapy, and only “in case of persistent cycle control problems, a switch to the 30 μ g EE2 drug should be considered.” Thus, there is nothing in Endikrat *et al.* that would suggest the desirability of modifying the 20 μ g treatment regime as proposed by Appellants. The teaching of Endikrat *et al.* is clearly to **begin** all treatment regimes with the lower, 20 μ g EE dose. This is in sharp contrast to Appellants’ teachings and claimed starter kit.

3. Only through impermissible hindsight, using Appellants’ own teachings, can one find motivation to combine or modify the cited references to reach the claimed invention.

Reading Endikrat *et al.* in view of Appellants’ specification and claims certainly supports Appellants’ position that an initial relatively high dose (30 μ g EE) cycle followed by relatively low dose (20 μ g EE) cycles benefits the patient with reduced breakthrough bleeding and spotting during the initial cycles and reduced estrogen in later cycles without substantially sacrificing efficacy and control in later cycles. However, it is *only* through this impermissible hindsight, in full view of Appellants’ disclosure, that one skilled in the art is given the suggestion to combine a relatively high dose initial treatment with a subsequent low dose treatment. No such suggestion is found in the art.

The case law makes it perfectly clear that the prior art, and not Appellants’ disclosure, must provide the teaching, suggestion, or motivation to modify or combine prior art references. Modifying or “[c]ombining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability—the essence of hindsight.” *In re Dembiczak*, 175 F.3d at 999, 50 USPQ2d at 1617.

Each of Endikrat *et al.* and Hodgen ‘394 clearly teach only the conventional approach of administering identical doses from cycle to cycle, with preference being shown for starting with safer, low dose formulations. Indeed, Endikrat *et al.* set forth data, in a side by side comparison, showing the effects of the high and low dose treatment regimes over a twelve month period without recognizing or suggesting a combined treatment regime. In the end, Endikrat *et al.* conclude not that the two regimes should be combined, but rather that the low

dose regime should be used wherever effective, and the higher dose should be used only after the low dose has been shown ineffective or intolerable in a particular patient. There simply is no recognition in Endikrat *et al.* that the two regimes could be combined for beneficial results. Nor is this recognition found in Hodgen '394. Only Appellants have suggested varying the dose from relatively higher dosage initial cycle to relatively lower dosage subsequent cycles. The case law is clear that Appellants' own teaching cannot be used as a blueprint for hindsight reconstruction. Accordingly, the obviousness rejection should be withdrawn.

4. Secondary considerations, such as long-felt, but unsolved need, are indicative of non-obviousness.

The Supreme Court has recognized several secondary considerations as indicative of non-obviousness in support of patentability. One of these secondary considerations is a long felt need in the art coupled with a prior failure to solve the problem. (*Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966).)

Increased incidence of breakthrough bleeding and spotting in initial contraceptive treatment cycles has been recognized in the prior art, particularly since the introduction of so-called "low-dose" contraceptives. There has been a long-felt need in the art to address the problem, particularly in low dose formulations. This long-felt need has been accompanied by a failure to provide a solution. Until now, those of skill in the art, including Endikrat *et al.* and Hodgen '394, have described treatment regimes consistent from one cycle to the next and contented themselves with acceptable bleeding patterns that contain relatively higher incidence of breakthrough bleeding and spotting in initial treatment cycles. Appellants, for the first time, have addressed the problem and provided a viable solution. Such a long-felt need and failure to solve the problem are secondary considerations showing non-obviousness supporting the patentability of Appellants' claimed invention. Despite the existence of the data found in Endikrat *et al.*, neither the authors of that paper nor, as far as the record shows, anyone else save for Appellants, has suggested a combination therapy whereby initial cycles are treated with higher dose estrogen formulations followed in subsequent cycles with low dose estrogen formulations. Indeed, prior to Endikrat *et al.*, and since, the conventional wisdom has been to find a treatment that is well-tolerated and to continue with that treatment and dosage from one cycle to the next. Under this conventional wisdom, a patient started on a 30 μ g formulation that was well-tolerated would be maintained on that formulation unless some undesirable complications resulted. Even in that case, the treatment would be stopped, and reevaluated before starting a new treatment. Even if a new low dose contraceptive were prescribed at this

point, it would not be in the form of Appellants' claimed starter kit, but rather as a new treatment regime administering only the newly prescribed low dose formulation.

Appellants respectfully submit that in light the above discussion, the Action does not set forth a *prima facie* case of obviousness, since there is no showing of any motivation in any of the references, that would lead one skilled in the art to modify the teachings of the references to result in a treatment regime and/or kit for facilitating the treatment regime, where the dose in the initial cycle(s) is relatively high followed by relatively low doses in later cycles, as taught by Appellants.

Appellants respectfully assert that the obviousness rejection should be withdrawn since there is no motivation to modify or combine the references, Appellants' claimed invention departs from conventional wisdom, the rejection relies on impermissible hindsight, and secondary considerations support the finding of non-obviousness.

(viii) Claims Appendix

Attached hereto is an appendix presenting current claims 1-11.

(ix) Conclusion

Appellants respectfully assert that independent claim 1 and all claims dependent therefrom are patentable over the cited combination of references. Withdrawal of the rejection is respectfully requested.

The Commissioner is hereby authorized to charge any fee or underpayment thereof or credit any overpayment to deposit account no. 50-1275.

Early and favorable action by the Board is respectfully requested.

Respectfully submitted,

COZEN O'CONNOR, P.C.



Date: February 9, 2006

By: Michael A. Patané
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CLAIMS APPENDIX

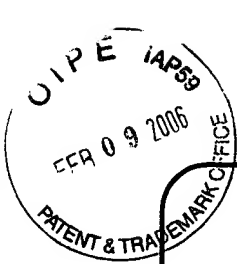
What is claimed is:

1. (Original) An oral contraceptive starter kit comprising at least two cycle packs of oral contraceptives containing an estrogen and a progestin, and having a penultimate and a last cycle pack, the effective dosage of steroid in the penultimate cycle pack being greater than the effective dosage of steroid in the last cycle pack, the last cycle pack providing no more than about 20 μg estrogen per dosage unit.
2. (Original) The starter kit of claim 1 wherein the cycle packs are packaged in individual units.
3. (Original) The starter kit of claim 1 wherein multiple cycle packs are packaged together as a single unit.
4. (Original) The starter kit of claim 1 further comprising written instructions describing the order of use of said cycle packs.
5. (Original) The starter kit of claim 1 wherein the estrogen is ethinylestradiol.
6. (Original) The starter kit of claim 1 wherein the progestin is selected from the group consisting of trimegestone, norgestrel, levonorgestrel, cyproterone acetate, 3-ketodesogestrel, desogestrel, gestodene, drospirenone, medroxy progesterone acetate, megestrol acetate, norgestimate, 17B deactyl norgestimate, osaterone, norethindrone, norethindrone acetate, lynestrenol, norethynodrel, and ethynodiol diacetate.
7. (Original) The starter kit of claim 1 wherein the estrogen is ethinylestradiol and the progestin is levonorgestrel.
8. (Original) The starter kit of claim 1 wherein the estrogen is ethinylestradiol and the progestin is norethindrone.
9. (Original) The starter kit of claim 1 wherein the estrogen is ethinylestradiol and the progestin

is norethindrone acetate.

10. (Original) The starter kit of claim 1 wherein the estrogen is ethinylestradiol and the progestin is gestodene.

11. (Original) The starter kit of claim 1 wherein the estrogen is ethinylestradiol and the progestin is norgestimate.



02/08/06

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/872,250	
	Filing Date	June 1, 2001	
	First Named Inventor	Gary S. Grubb	
	Art Unit	1617	
	Examiner Name	San Ming R. Hui	
Total Number of Papers in This Submission	Two	Attorney Docket Number	WYTH0106-100 (AM100058)

ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): - with Claim Appendix
Remarks EXPRESS MAIL LABEL NO.: EV146 601 619US DATE OF DEPOSIT: February 9, 2006		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

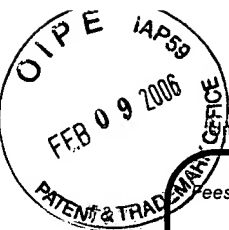
Firm	Cozen O'Connor, P.C.		
Signature			
Printed Name	Michael A. Patané		
Date	February 9, 2006	Reg. No.	42,982

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Typed or printed name	Michael A. Patané	Date	February 9, 2006

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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL for FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 500.00

Complete if Known

Application Number	09/872,250
Filing Date	June 1, 2001
First Named Inventor	Gary S. Grubb
Examiner Name	San Ming R. Hui
Art Unit	1617
Attorney Docket No.	WYTH0106-100 (AM100058)

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify) : _____
☒ Deposit Account Deposit Account Number: 50-1275 Deposit Account Name: Cozen O'Connor, P.C.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Charge fee(s) indicated below, except for the filing fee
☒ Charge any additional fee(s) or underpayments of fee(s) ☒ Credit any overpayments
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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee(\$)	Fee(\$)	Small Entity Fee(\$)	Fee(\$)	Small Entity Fee(\$)	
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

2. EXCESS CLAIM FEES

Fee Description

Each claim over 20 (including Reissues)

Fee (\$)

Small Entity Fee (\$)

Each independent claim over 3 (including Reissues)

50

25

Multiple dependent claims

200

100

Total Claims

360

180

Extra Claims

Multiple Dependent Claims

11

Fee (\$)

Fee Paid (\$)

-20 or HP=

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims

01

-03 or HP=

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____	_____	_____	_____	_____

_____ - 100 = _____ / 50 = _____ (round up to a whole number) x

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Fees Paid (\$)

Other (e.g., late filing surcharge) : Appeal Brief Fee

\$500.00

SUBMITTED BY

Signature		Registration No. (Attorney/Agent)	42,982	Telephone	(215) 665-6966
Name (Print/Type)	Michael A. Patané	Date	February 9, 2006		

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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